

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 28, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 07od-172

OAHU

Issuance of Two Term Non-Exclusive Easements for Seawall and Loose Rock Wall for Landscaping Purposes to the Zerme Family Trusts B, Zerme Family Trusts C, Holawa C LLC, and Michael M. Dixon, Grantees; Paumalu, Koolauloa, Oahu; TMK (1) 5-9-001:027, 5-9-001:110-0003 & 5-9-001:110-0004 seaward; ~~and~~ Cancellation of Grant of Non-Exclusive Easement No. 5163.

APPLICANTS:

(1) 5-9-001:027

Zerme Family Trusts B and Zerme Family Trusts C together as joint tenants whose mailing address is 312 South Grand Avenue, Pasadena, California 91105-1626; and

(1) 5-9-001:110-0003 & 5-9-001:110-0004

Holawa C LLC and Michael M. Dixon together as joint tenants, whose mailing address is P.O. Box 461 Haleiwa, Hawaii 96712.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaneohe located seaward of (1) 5-9-001:027, (1) 5-9-001:110-0003 and (1) 5-9-001:110-0004, Paumalu, Koolauloa, Oahu, as shown on the attached map labeled Exhibit A.

AREA:

4,484 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _____ NO x

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CURRENT USE STATUS:

Encumbered under Grant of Non-Exclusive Easement No. S-5163.

CHARACTER OF USE:

Right, privilege and authority to use, repair and maintain seawall and loose rocks wall for landscaping purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

The most recent rental reopening for the Grant of Non-Exclusive Easement No. S-5163 was conducted as of March 10, 2007. Staff recommends using the current rental for GL 5163 as a base to calculate the consideration payable by the respective easement owners subject to review and approval of the Chairperson.

Next rental reopening is March 10, 2017.

LEASE TERM:

Nineteen (19) years, commencing on March 10, 2008 and terminating on March 9, 2027. Since the request is for housekeeping purposes, staff recommends using the annual billing date as the commencement date of the requested easements. See Remarks for background of the request.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

None.

REMARKS:

A letter dated September 17, 1973 from the State Comptroller to

the Department stating that a survey map was submitted for a shoreline certification but an extensive encroachment on government land was revealed.

On March 8, 1985 the Board approved, as amended, the direct sale of a 40-year non-exclusive easement for seawall and loose rock wall for landscaping purposes at the subject site. At its November 26, 1985, the Board approved the CDUA.

In 1985, Dixon and Zerne jointly purchased the property abutting the seawall, which at that time was treated as one single lot, identified by tax map key (1) 5-9-001:027. In 1992, parcel 27 was subdivided into two separate lots, identified as (1) 5-9-001:027 & 110, owned by Dixon and Zerne respectively.

In October 2007, Zerne wrote to our office and said that he and Dixon were not related in any manner and requested assistance in dividing the existing easement. Staff reviewed the request and believed that dividing the subject easement area and issue two new easements for the remaining terms of the subject easement (i.e. 19 years) is the best alternative to resolve the dispute between Dixon and Zerne. In short, the essence of GL 5136 is not changed other than the fact that the document is now becoming two documents. Both parties have no objection on the proposed request.

The two new easements will be issued at an annual rent according to the prorated amount at the current rate of GL 5136, based on the respective easement areas.

Under the condominium property regime developed by Dixon on his property, Units C and D, identified by tax map key (1) 5-9-001:110-0003 and (1) 5-9-001:110-0004 respectively, abut the seawall. Therefore, staff recommends the Board authorize the proposed easement shall inure to these two units.

The Office of Hawaiian Affairs (OHA) made several comments (see Exhibit B). OHA emphasized the ceded lands status from which OHA receives 20% of the revenues. The revenues collected from the new easements will follow other similar dispositions from which OHA receives the share of the revenue. The City and County of Honolulu, Department of Planning and Permitting indicating they had no comments. No other agencies provide comments.

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. They are also in compliance with the current terms and conditions of GL 5136.

RECOMMENDATION: That the Board

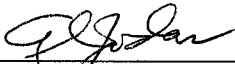
1. Declare that after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the project's existing lines and no expansion or change of use beyond that previously existing

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will have minimal effect on the environment.

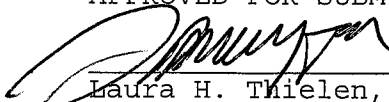
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcels described as Tax Map Keys: (1) 5-9-001:027 and (1) 5-9-001:110-0003 & (1) 5-9-001:110-0004, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the applicants fulfilling all of the applicant requirements listed above, authorize the issuance of a term non-exclusive easement for seawall and loose rock wall for landscaping purposes to Zerme Family Trusts B, Zerme Family Trusts C, Holawa C LLC, and Michael M. Dixon, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 5-9-001:027, (1) 5-9-001:110-0003 and (1) 5-9-001:110-0004 respectively, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
4. Authorize the cancellation of Grant of Non-Exclusive Easement No. 5163 upon the execution of the easement documents.

Respectfully Submitted,



Al Jodar
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



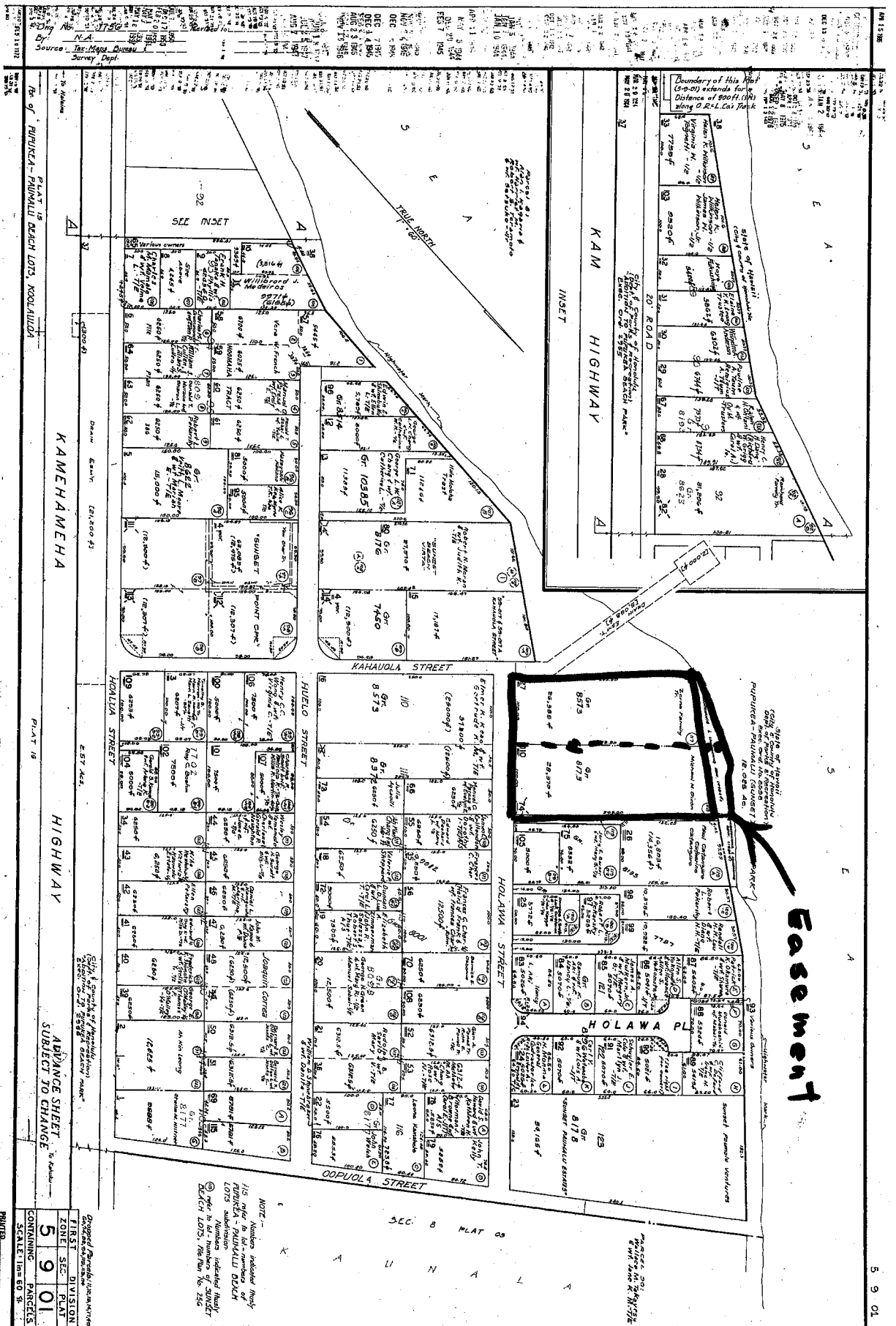


EXHIBIT "A"



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

RECEIVED
LAND DIVISION

2008 JAN 17 A 9:45

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

HRD08/3452

0702-122
CL 5163

January 15, 2008

Al Jodar, District Land Agent
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii'i 96809

**RE: Request for Review and Comment for Purchase of Seawall
and Reclaimed Land Easement on State Lands, Kāne'ohe, O'ahu,
TMKs: (1) 5-9-01:27 and 110.**

Dear Mr. Jodar,

The Office of Hawaiian Affairs (OHA) is in receipt of your request for written comments regarding the purchase of a seawall and reclaimed land easement on State lands in Kāne'ohe on O'ahu. We have the following comments:

OHA understands that this issue was first brought to the attention of the Board of Land and Natural Resources in 1979 and then in 1985 an easement was issued by the Board for a landscaping seawall. OHA is surprised that an easement was issued for landscaping; however, we realize that was over 20 years ago and we are hopeful that times have changed.

OHA's other considerations center around the issue of the rent for the easement itself. OHA understands after a conversation with Department of Land and Natural Resources (DLNR) staff that essentially the only change to this 'housekeeping' matter is in the splitting of the rent by the applicants, the Zernes and the Dixons. As this is a long-term contract, OHA urges that the applicants be both far-sighted and diligent in their obligations to the State.

Further, OHA also recognizes that these lands are ceded and we request that they be treated with the respect due to them. As you know, because these lands became a part of the public land trust under section 5(b) of the Admissions Act,

EXHIBIT "B"

Al Jodar, District Land Agent
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OHA is also entitled to 20% of all revenue generated on this land. OHA also appreciates DLNR referring to this parcel as ceded lands so that the special status is known to others, which also facilitates the continued ceded lands registry and the creation and maintenance of an accurate ceded lands inventory.

Thank you for the opportunity to comment. If you have any further questions or concerns please contact Grant Arnold at (808) 594-0239 or granta@oha.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Clyde W. Nāmu'o". The signature is fluid and cursive, with a large initial "C" and a stylized "W".

Clyde W. Nāmu'o
Administrator